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IN THE

Supreme Court of The United States

OCTOBER TERM, A. D. 1942

No. 577

CHARLES M. THOMSON, Trustee of the Property of CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS (Herman E. Stoll),

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, AND SUPPORTING BRIEF.

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Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS (Herman E. Stoll),

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, AND SUPPORTING BRIEF.

MAY IT PLEASE THE COURT:

Charles M. Thomson, Trustee of the property of Chicago and North Western Railway Company, respectfully shows to this Honorable Court:

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

This proceeding originated in an application filed by Herman E. Stoll with the Industrial Commission of Illinois for an award of compensation under Section 8 of the Illinois Workmen's Compensation Act (Illinois Revised

Statutes, 1939, Chapter 48, paragraph 145). Stoll, who is hereinafter referred to as respondent, sought compensation for injuries suffered by him while employed by petitioner. Respondent's duties were to patrol the right of way in the various districts to which he was assigned; look out for fires; eject or arrest trespassers; examine and test seals on cars (both interstate and intrastate); protect the cars and their contents from thieves and trespassers; inspect passing trains (both interstate and intrastate) for hot boxes and other defects; and observe the tracks for broken rails and obstructions (R. 8-11).

Petitioner was at all times herein involved the duly qualified trustee of the property of the Chicago and North Western Railway Company and operated such property as a common carrier, engaged in both interstate and intrastate transportation (R. 15, 16, 22, 23). As such he was therefore subject to the Federal Employers' Liability Act (U. S. Code Title 45, Sec. 51, et seq.).

On March 11, 1940, shortly after reporting for work, respondent, while in the performance of his said duties and in going from petitioner's North Avenue yard office along petitioner's right of way to another portion of the railroad yard, was assaulted by trespassers and injured (R. 7). The Industrial Commission allowed his claim and awarded him compensation under the Illinois Workmen's Compensation Act (R. 27, 30). The award was affirmed by the Circuit Court of Cook County (R. 30) and by the Supreme Court of Illinois (R. 61, 62).

The Supreme Court of Illinois held that respondent was not engaged in interstate commerce at the time of his injury; that although certain of his regular duties were in furtherance of interstate commerce, the work he was doing at the time of his injury was not, and that the Employers' Liability Act is applicable only in cases where the employee